

RULEMAKING NOTICE FORM

Notice
Number

2016-215

Rule Number

He-P 2700

<p>1. Agency Name & Address:</p> <p style="margin-left: 40px;">Dept. of Health and Human Services Division of Public Health Services Food Protection Services 29 Hazen Drive Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 184:30-h, RSA 184:85</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p style="margin-left: 40px;">Adoption _____</p> <p style="margin-left: 40px;">Amendment _____</p> <p style="margin-left: 40px;">Repeal _____</p> <p style="margin-left: 40px;">Readoption <u>X</u></p> <p style="margin-left: 40px;">Readoption w/amendment <u>X</u></p>
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5. Short Title: **Milk Producers, Milk Plants, Producer Distributors, and Distributors**

6. (a) Summary of what the rule says and of any proposed amendments:

Most of He-P 2700 is scheduled to expire 11-21-16, but subject to extension pursuant to RSA 531-A:14-a. The Department of Health and Human Services, (Department) proposes to readopt or readopt with amendment all the rules in He-P 2700.

The proposed He-P 2700 contains the permit and licensing requirements for milk producers, milk plants, milk producer/distributors, and milk distributors, including procedures for applications and inspections. The proposal also contains fees to be charged for annual graduated licenses and the procedures for denial and revocation of licenses and permits. The proposal affects the New Hampshire dairy industry in that it contains the process for becoming licensed or permitted and the reasons and procedure for actions taken against those holding licenses and permits.

The Department's proposal includes the following changes from the existing rules: an option for on-line payment of licensing fees and fines by credit card, incorporation by reference of the licensing and permitting forms, and the introduction of three new \$500 fines relating to repetition of the same critical violation, failure to enter a corrective action plan, and failure to comply with a corrective action plan required by the Department. The proposal clarifies the application process for milk producers, and the producer permit rules. The proposal also clarifies violations which are sanctionable by license revocation.

6. (b) Brief description of the groups affected:

Those affected by the rules include milk producers, milk plants, milk producer distributors and distributors of the milk industry. Also affected are the members of the general public consuming and purchasing products produced by the milk industry.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Specific State or Federal Statutes or Regulations which the Rule Implements
He-P 2701.01	RSA 184:79, 184:80 & 184:88
He-P 2702.01	RSA 184:88 & 184:89
He-P 2702.02	RSA 541-A:29 & 184:89
He-P 2702.03	RSA 184:88 & 184:89
He-P 2702.04	RSA 184:90 & 184:91
He-P 2702.05	RSA 184:89
He-P 2702.06	RSA 184:90-a
He-P 2702.07	RSA 541-A:30, II, 184:90, 184:91 & 184:94
He-P 2702.08	RSA 184:90 & 184:90-a
He-P 2702.09	RSA 184:90 & 184:92
He-P 2702.10	RSA 184:89 & 184:90
He-P 2703.01	RSA 184:84 & 184:85, I
He-P 2703.02	RSA 541-A:29 & 184:85, I
He-P 2703.03	RSA 184:85
He-P 2703.04	RSA 184:86 & 184:87
He-P 2703.05	RSA 184:84
He-P 2703.06	RSA 184:85, 86
He-P 2703.07	RSA 184:86, 541-A:30, II, 184:87 & 184:94
He-P 2703.08	RSA 184:84
He-P 2703.09	RSA 184:86, & 184:92
He-P 2703.10	RSA 184:85, II & 184:86
He-P 2704.01	RSA 184:85, II & 184:89
He-P 2705.01	RSA 184:105 & 541-A:31, III
RSA 2705.02	RSA 184:105
He-P 2705.03	RSA 6:11-a, 184:85, III & IV & 184:105
He-P 2706.01	RSA 184:85

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Catherine Bernhard	Title:	Rules Coordinator
Address:	Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant St. Concord, NH 03301	Phone #:	271-9374
		Fax#:	271-5590
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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **December 15, 2016**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **December 8, 2016 at 1:00 P.M.**

Place: **DHHS Brown Bldg., Room 232 129 Pleasant St., Concord, NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **16:224**, dated **10/27/16**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules, the proposed rules may increase costs to individuals and independently-owned businesses, and may increase costs and revenue to the state general fund.

2. Cite the Federal mandate. Identify the impact of state funds:

There is no federal mandate, and no impact on state funds.

3. Cost and benefits of the proposed rule(s):

He-P 2700 establishes the permit and licensing requirements for milk producers, milk plants, and milk distributors. The changes included in the proposed rules include a new option for online payment of licensing and fees by credit card, and incorporation by reference of the licensing and permitting forms. The proposed rules also clarify the application process for milk producers, as well as the producer permit rules. In addition, the proposed rules add three new fines of \$500 each for those who repeat the same critical violation, fail to enter into a corrective action plan, and fail to comply with a corrective action plan required by the Department.

A. To State general or State special funds:

There is a cost to the Department associated with the inspection of those licensed under both the existing and proposed rules that include employee time, mileage, and supplies for those state employees who travel to conduct inspections. Any increase in cost associated with the proposed rules is indeterminable. In addition, there may be an indeterminable benefit to the general fund pursuant to RSA 184:105 from any fines paid to the Department for the three new fines associated with the rules.

B. To State citizens and political subdivisions:

The proposed rules present a potential cost to individuals to the extent that they are subject to any of the three new fines included in the rules. There is no impact on political subdivisions..

C. To Independently owned businesses:

The proposed rules present a potential cost to independently-owned businesses to the extent that they are subject to any of the three new fines included in the rules.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not create a new program or responsibility. The proposed rules modify an existing program or responsibility, but do not mandate any fees or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment He-P 2701 and He-P 2702, effective 11-21-08 (Document #9325), cited and to read as follows:

CHAPTER He-P 2700 MILK PRODUCERS, MILK PLANTS, PRODUCER/DISTRIBUTORS, AND DISTRIBUTORS

Statutory Authority: RSA 184:30-h; RSA 184:85, III

PART He-P 2701 PRODUCERS, MILK PLANTS, PRODUCER/DISTRIBUTORS, AND DISTRIBUTORS

He-P 2701.01 Definitions.

- (a) “Commissioner” means commissioner of the department of health and human services.
- (b) “Critical item” means an inspection item that when found out of compliance is presumed to be endangering the public health and safety.
- (c) “Department” means “department” as defined in RSA 184:79, XIV.
- (d) “Facility” means the building(s) at one location where a permit or license has been issued to conduct all of the required functions that are allowed within the permit or license.
- (e) “Federal rating” means “milk sanitation rating” as defined in RSA 184:79, XXI, that is performed by a federally certified rating officer on Grade A milk plants, or producer-distributors, or milk producers.
- (f) “Grade A” means “grade A” milk products as defined in the Pasteurized Milk Ordinance pursuant to Mil 301.01.
- (g) “Milk” means “milk” as defined in RSA 184:79, XXII.
- (h) “Milk distributor” means “milk distributor” as defined in RSA 184:79, X.
- (i) “Milk inspector” means “milk inspector” as defined in RSA 184:79, XVI.
- (j) “Milk plant” means “milk plant” as defined in RSA 184:79, XIII.
- (k) “Milk producer” means “milk producer” as defined in RSA 184:79, IX.
- (l) “Milk producer permit” means the permit that is issued by the commissioner to any milk producer who is operating within the state of New Hampshire.
- (l) “Milk products” means “milk products” as defined in RSA 184:79, XXIV.
- (m) “Milk sanitation board” means “milk sanitation board” as established by RSA 184:80.
- (n) “Milk sanitation rating” means “milk sanitation rating” as defined in RSA 184:79, XXI.
- (o) “Non-Grade A” means milk products not listed as “Grade A” in Mil 301, including but not limited to:
 - (1) Ice cream;

- (2) Reduced fat ice cream;
- (3) Nonfat ice cream;
- (4) Soft cheese;
- (5) Hard cheese products; ~~and~~
- (6) Butter;
- (7) Frozen yogurt; and
- (8) Gelato.

(p) "Producer-distributor" means "producer-distributor" as defined in RSA 184:79, XI.

(q) ~~Producer permit" means "producer permit" as defined in RSA 184:89.~~

PART He-P 2702 APPLICATION, PERMITTING, AND INSPECTION OF MILK PRODUCERS

He-P 2702.01 Application Submission.

(a) A milk producer shall submit a signed and dated "Application for Milk Producer Permit~~Sanitation License~~" Form MPAPPMSLAPP (01-01-17) ~~a written, signed and dated~~ application to the department ~~on a form obtained from the department~~ for a producer permit required under RSA 184:88.

(b) Upon receipt of a signed and dated "Application for a Milk Producer Permit" Form MPAPP (01-01-17) ~~an application~~ for a milk producer permit, the commissioner shall approve or deny the application in accordance with procedures set forth in RSA 184:89, RSA 184:90, RSA 184:91 and He-P 2702.02 through He-P 2702.04.

He-P 2702.02 Processing of Applications.

(a) Applications shall be processed in accordance with RSA 541-A:29.

(b) If all the items required by He-P 2702.01 are received, the application shall be deemed to be complete.

He-P 2702.03 Permit Issuance and Duration.

(a) Following the receipt of a completed application, if a sanitary inspection conducted in accordance with He-P 2702.09 results in a score of not less than 95 with no critical violations, a producer permit shall be issued.

(b) All producer permits shall remain in effect:

- (1) Unless suspended or revoked; or

(2) Until 6 months have passed since operations have ceased at the permitted facility, ~~except in the case of permanent facilities located at fairgrounds or other locations which are used at least annually.~~

(c) Producer permits shall not be transferable with respect to persons or locations.

He-P 2702.04 Denial of Permit Applications.

(a) The department shall deny a producer permit application if an applicant for a producer permit does not receive a minimum score of 95 on an inspection with no critical item violations set forth in He-P 2702.10.

(b) Producer permit applications shall be denied in accordance with RSA 184:90 and RSA 184:91.

He-P 2702.05 Milking Facility Change of Ownership.

(a) If a milking facility changes ownership, a producer permit shall not be issued until after completion of an inspection in accordance with He-P 2702.09.

(b) A producer permit shall not be issued for a change of ownership unless the inspection results in:

(1) A minimum score of 95 on a sanitary inspection; and

(2) There is no violation of any critical items set forth in He-P 2702.10.

He-P 2702.06 Suspension of Milk Producer Permits; Reinstatement.

(a) The department shall suspend a producer permit if:

(1) The producer inhibits any inspection or investigation conducted by the department;

(2) Milk from the producer's farm has exceeded the standards for milk quality pursuant to Mil 301.01 on any 3 out of the last 5 samples;

(3) The producer offers for sale any milk contaminated with antibiotics;

(4) The producer has more than 2 consecutive violations of the same critical item [as listed in He-P 2702.10](#);

(5) The producer is making an insufficient amount of milk such that the milk from the first milking is not properly agitated; or

(6) The producer fails to comply with any compliance agreement entered into in accordance with He-P 2704.01.

(b) Producer permits shall be suspended in accordance with RSA 184:90-a.

(c) Suspended producer permits shall be reinstated in accordance with RSA 184:90-a and when an inspection of the facility or analysis of the milk indicates that the violation(s) which resulted in the suspension has been corrected.

He-P 2702.07 Revocation of Milk Producer Permits; Reinstatement.

(a) The department shall revoke a milk producer's permit when the milk producer's permit has been suspended 3 times within any 12 month period.

(b) The department shall revoke a milk producer's permit when the milk producer has offered for sale milk contaminated with antibiotics 3 times within any 12 month period.

(c) The department shall revoke a producer permit in accordance with RSA 541-A:30, II, RSA 184:90, and RSA 184:91.

(d) Any producer who has had a producer permit revoked shall be prohibited from applying to renew the producer permit until 6 months following the date of the revocation.

(e) Rehearings and appeals of decisions of the commissioner, resulting from an adjudicative proceeding, shall be in accordance with RSA 184:94.

He-P 2702.08 Effect of Denial of Application, Suspension, or Revocation.

(a) Any applicant who has been denied a producer permit shall not offer milk for sale to any milk plant or cooperative.

(b) If a producer permit has been suspended, the milk producer shall cease operation immediately, in accordance with RSA 184:90-a.

(c) If a producer permit has been revoked, the milk producer shall not offer milk for sale to any milk plant or cooperative.

He-P 2702.09 Inspection of Dairy Farms.

(a) Inspections of all milk producers shall be conducted in accordance with RSA 184:82, RSA 184:92, and Mil 301.

(b) Inspections shall be conducted:

(1) Prior to issuance of a producer permit;

(2) At least twice each year in accordance with RSA 184:92; and

(3) Whenever the department has reason to believe a condition exists that places the producer in non-compliance with Mil 301, RSA 184, or He-P 2700.

(c) When violations of critical item are found during an inspection, the department shall conduct a follow-up inspection.

(d) If the follow-up inspection under (c) above shows violation of the same critical item or items:

(1) The milk producer shall be notified in writing of the violation and given reasonable time to afford compliance, in accordance with RSA 184:90;

(2) A second follow-up inspection shall be conducted by 2 inspectors; and

- (3) If the second follow-up inspection shows violation of the same critical item or items, the milk producer's permit shall be suspended on the day of the inspection.
- (e) When the inspection documents a score of less than 90 with no critical violations, the permit holder shall be presumed to be a potential threat to public health and safety, and the department shall conduct a follow-up inspection.
- (f) If the follow-up inspection under (e) above also results in a score of less than 90:
- (1) The milk producer shall be notified in writing of the violation and given reasonable time to afford compliance, in accordance with RSA 184:90;
 - (2) A second follow-up inspection shall be conducted ~~by 2 inspectors~~; and
 - (3) If the second follow-up inspection results in a score of less than 90, the milk producer shall be required to enter into a compliance agreement, in accordance with He-P 2704.01.
- (g) When an inspection is completed and the score is 90 or higher and no critical items are in violation, the next inspection shall take place within the following 6 months.
- He-P 2702.10 Critical Items. On the "Dairy Farm Inspection" report contained in the Pasteurized Milk Ordinance incorporated by reference in Mil 301.01, the following shall be considered critical items:
- (a) Item 1a: Abnormal Milk;
 - (b) Item 8a - c: Water Supply - 5 point violation which includes:
 - (1) Improperly constructed or protected wells;
 - (2) Improper submerged inlets;
 - (3) Cross connections between safe and unsafe water supplies; and
 - (4) Water supply does not meet bacterial standards found in the Pasteurized Milk Ordinance pursuant to Mil 301.01(c)(5)f.13.;
 - (c) Item 10a: Cleaning of Utensils and Equipment, when marked in conjunction with Item 11a: Sanitization of Utensils and Equipment;
 - (d) Item 15d, e, or g: Drugs and Extra-label Drugs Properly Labeled and Used; and
 - (e) Item 18a or c: Cooling of Milk.

Readopt with amendment He-P 2703.01, effective 11-21-08 (Document #9325), cited and to read as follows:

PART He-P 2703 APPLICATION, LICENSING, AND INSPECTION OF IN-STATE AND OUT-OF-STATE MILK PLANTS, PRODUCER-DISTRIBUTORS, AND DISTRIBUTORS

He-P 2703.01 Application Submission.

(a) All applicants for licensure under RSA 184:84 shall submit to the department a signed and dated application "Application for Milk Sanitation License" MSLAPP (01-01-17) obtained from the department which is typewritten or legibly printed in ink.

(b) The applicant shall provide the following along with the application:

(1) ~~A copy of every label used for product identity;~~ A specific product list

(2) A copy of the results of the latest federal rating or the facility's Interstate Milk Shippers code number if the facility is an out-of-state grade A milk plant or producer-distributor;

(3) A copy of the latest facility inspection conducted by the state or local agency with regulatory authority over the facility if the applicant is an out-of-state non-grade A milk plant or producer-distributor; and

(4) Payment made by aA credit card on line at <http://www.dhhs.nh.gov/dphs/fp/index.htm>, a check or a money order for the applicable fees in accordance with He-P 2706.01 shall be submitted with ~~the~~a license application.

(5) A certification by the applicant that:

a. All information provided in or attached to the application is complete, accurate and up-to-date as of the date of the application;

b. There are no willful misrepresentations of answers to questions herein, and no omissions respect to any of the answers and questions presented; and

c. The applicant shall immediately notify the food protection section with regard to any changes, corrections or updates to the information provided in the application.

(c) Upon receipt of an application for the facility, the commissioner shall approve or deny the application in accordance with RSA 184:86, RSA 184:87, He-P 2703.03 and He-P 2703.04.

Readopt He-P 2703.02, effective 11-21-08 (Document # 9325), to read as follows:

He-P 2703.02 Processing of Applications.

(a) An application shall be processed in accordance with RSA 541-A:29.

(b) If the application does not contain all of the items required by He-P 2703.01, the department shall:

(1) Not process the application; and

(2) Notify the applicant in writing that all required items must be submitted within 30 days in order for the application to be processed.

(c) If all the items required by He-P 2703.01 are received, the application shall be deemed to be complete.

Readopt with amendment He-P 2703.03 – He-P 2703.05, effective 11-21-08 (Document #9325), to read as follows:

He-P 2703.03 License Issuance and Duration.

(a) If the application for an in-state milk plant, distributor or producer-distributor meets the requirements of He-P 2703.02 and an inspection of the facility conducted in accordance with He-P 2703.10 determines compliance with He-P 2700 and Mil 301, a license shall be issued.

(b) If the application for an out-of-state grade A milk plant or producer-distributor meets the requirements of He-P 2703.02 and if a federal rating conducted on the facility results in a score of 90 or higher, a license shall be issued.

(c) If the application submitted by an out-of-state non-grade A milk plant or producer-distributor meets the requirements of He-P 2703.02 and if the copy of the latest inspection submitted with the application shows compliance with Mil 301, a license shall be issued.

(d) If the application submitted by a distributor meets the requirements of He-P 2703.02, a license shall be issued.

(e) All licenses shall remain in effect until the first of January of the year following issuance or until revoked, pursuant to RSA 184:85.

(f) Licenses shall not be transferable with respect to persons or locations.

He-P 2703.04 Denial of License Applications.

(a) The department shall deny a license for an in-state milk plant, distributor or producer-distributor if the applicant does not receive a minimum score of 95 on an inspection or has violations of critical items as set forth in He-P 2703.10.

(b) The department shall deny a license for an out-of-state milk plant or producer-distributor if:

(1) The applicant is a grade A milk plant or producer-distributor and does not have a federal rating with a score of 90 or higher; or

(2) The copy of the latest inspection submitted by the applicant, who is a non-grade A milk plant or producer-distributor, does not show compliance with Mil 301.

(c) The department shall deny an application if the application is not complete in accordance with He-P 2703.01 and items requested by the department in accordance with He-P 2703.02 are not received within the time requested.

(d) License applications shall be denied in accordance with RSA 184:86 and RSA 184:87.

He-P 2703.05 Milk Plant, Producer-Distributor, or Distributor Change of Ownership.

(a) If an in-state milk plant, distributor or producer-distributor changes ownership, a license shall not be issued until after completion of an inspection in accordance with He-P 2703.09, and the new owner complies with He-P 2703.01.

(b) If an out-of-state milk plant, distributor or producer-distributor changes ownership, a license shall not be issued until an application is submitted as required in He-P 2703.01.

~~(c) If a distributor changes ownership, a license shall not be issued until an application is submitted as required in He-P 2703.01.~~

Readopt with amendment He-P 2703.06, effective 10-22-15 (Document #10956), to read as follows:

He-P 2703.06 Renewal of Licenses.

(a) License renewal applications for milk plants, producer-distributors, and distributors shall be completed as required in He-P 2703.01, ~~with the exception that only labels for new products and labels which have changed since issuance of the previous license shall be submitted.~~

(b) Licenses for milk plants, producer-distributors, and distributors shall be renewed provided the following conditions exist at the time of renewal:

(1) ~~An~~ The last inspection conducted by the department on an in-state milk plant, distributor or producer-distributor license holder ~~within a 3 month period~~ before the renewal results in a score of 90 or higher with no critical violations;

(2) No milk or milk products from the plant, sampled and analyzed by the department, exceed the quality standards in Mil 301 on 2 of the last 4 samples;

(3) A minimum score of 90 on the last federal rating is obtained by a grade A out-of-state milk plant or producer-distributor license holder;

(4) The copy of the latest inspection submitted by an out-of-state non-grade A milk plants and producer-distributors shows compliance with Mil 301;

(5) The distributor has submitted a complete application as required in (a) above; and

(6) There is no violation of RSA 184:86.

(c) Each licensee shall apply to renew his or her license pursuant to He-P 2702.01(a) at least 30 days prior to the expiration of the current license.

Readopt with amendment He-P 2703.07, effective 10-21-08 (Document #9325), to read as follows

He-P 2703.07 Revocation of Licenses.

(a) Revocation of a milk license shall occur when:

- (1) ~~Two~~ More than two consecutive inspections conducted by the department of an in-state milk plant, distributor or producer-distributor license holder determine the license holder is not in compliance with He-P 2700 and Mil 301 and has a violation of one or more critical items as described in He-P 2703.10;
 - (2) A minimum score of 90 on a ~~federal rating~~ U.S. Public Health rating conducted by a FDA certified milk sanitation rating officer is not obtained by an out-of-state milk plant and; producer-distributor; ~~and distributor~~ license holder;
 - (3) An in-state milk plant, distributor or producer-distributor fails to meet the requirements of a compliance agreement entered into in accordance with He-P 2704.01;
 - (4) An in-state milk plant or producer-distributor fails to meet quality standards in Mil 301 for 3 out of 5 samples of one or more products and does not enter into a compliance agreement as specified in He-P 2704.01(c); or
 - (5) There is a violation as described in RSA 184:86.
- (b) The department shall revoke a license in accordance with the procedures set forth in RSA 541-A:30, II, and RSA 184:86 and 87.
- (c) Rehearing and appeals of decisions of the department, resulting from an adjudicative proceeding, shall be in accordance with RSA 184:94.
- (d) Any milk plant, producer-distributor, or distributor which has had a license revoked shall be prohibited from applying to renew their license until 6 months following the date of the revocation.

Readopt He-P 2703.08, effective 10-21-08 (Document #9325), to read as follows:

He-P 2703.08 Effect of Denial of Application or Revocation.

- (a) Any applicant who has been denied a license shall not operate as a milk plant, producer-distributor, or distributor.
- (b) If a license has been revoked, the milk plant or producer-distributor or distributor shall cease operation immediately, pursuant to RSA 184:84.

Readopt with amendment He-P 2703.09, effective 11-21-08 (Document # 9325), to read as follows:

He-P 2703.09 Inspection of Milk Plants, Distributors and Producer-Distributors.

- (a) Inspections of all in-state milk plants, distributors and producer-distributors shall be conducted in accordance with RSA 184:86 and Mil 301. Inspections of out-of-state milk plants and producer-distributors shall be conducted by the state or local regulatory agency with authority over the facility in accordance with the Pasteurized Milk Ordinance pursuant to Mil 301.

- (b) Inspections shall be conducted:

- (1) Prior to issuance of a license;

- ~~(2) At least once every 3 months, unless the milk plant is operated seasonally; or~~

(3) Whenever the department has reason to believe a condition exists that places the milk plant, distributor or producer-distributor in non-compliance with Mil 301, RSA 184, or He-P 2700.

(c) When critical items are found in violation, the license holder shall be presumed to be endangering public health and safety and:

(1) The license holder shall be notified in writing or through email of the violation and given reasonable time to afford compliance; and

(2) A follow-up inspection shall be conducted ~~by 2 inspectors~~.

(d) If ~~the a 2nd~~ follow-up inspection under (c) above shows violation of the same critical item or items listed in He-P 2307.10, license revocation shall be initiated as described in He-P 2703.07a fine shall be imposed.

(e) If a 3rd follow-up inspection conducted by 2 inspectors under (c) above shows violation of the same critical item or items listed in He-P 2703.10, license revocation shall be initiated as described in He-P 2703.07, and a second fine may be imposed.

(~~ef~~) When an inspection results in a score of less than 90 with no violation of critical items, the license holder shall be presumed to be a potential threat to public health and safety, and the department shall conduct a follow-up inspection.

(~~fg~~) If the follow-up inspection under (~~ef~~) above also finds the license holder not in compliance with Mil 301 or He-P 2700:

(1) The license holder shall be notified in writing or through email of the violation and given reasonable time to afford compliance; and

(2) A second follow-up inspection shall be conducted ~~by 2 inspectors~~.

(~~gh~~) If the follow-up inspection under (~~fg~~)(2) above shows violation of the same item or items, the license holder shall be required to enter into a compliance agreement in accordance with He-P 2704.01.

(~~hi~~) When an inspection is completed and the score is 90 or higher with no violation of critical items, the next inspection shall take place within the following 3 months.

(~~ij~~) Non-grade A milk plants and producer-distributors, located within the state, ~~which operate on a seasonal basis~~ may be inspected at an interval of greater than 3 months, ~~but shall be inspected prior to resuming operations.~~

Readopt He-P 2703.10, effective 11-21-08 (Document #9325), to read as follows:

He-P 2703.10 Critical Items. On the Milk Plant Inspection Report contained in the Pasteurized Milk Ordinance incorporated by reference in Mil 301.01, the following shall be considered critical items:

(a) Item 7a - d: Water Supply;

(b) Item 12a or c: Cleaning and Sanitizing of Containers/Equipment;

- (c) Item 15b: Cross Connections;
- (d) Item 16a,2, 16b,2, or 16c,2: Time and Temperature Controls;
- (e) Item 16b,3 or 16c,3: Adulteration Controls;
- (f) Item 16d: Regenerative Heating; and
- (g) Item 17(a, b, or d): Cooling of Milk.

Readopt with amendment He-P 2704, effective 11-21-08 (Document #9325), to read as follows:

PART He-P 2704 COMPLIANCE AGREEMENTS

He-P 2704.01 Procedure for Compliance Agreements.

(a) If a milk producer scores below a 90 on 3 consecutive inspections with no violation of any critical items as set forth in He-P 2702.10, the producer shall enter into a compliance agreement with the department.

(b) If an in-state milk plant, distributor or producer/distributor scores below a 90 on 3 consecutive inspections with no violation of any critical items as set forth in He-P 2703.10, the milk plant, distributor or producer/distributor license holder shall enter into a compliance agreement with the department.

(c) If one or more milk or milk products produced by an in-state milk plant or producer-distributor fail to meet quality standards adopted in Mil 301 for 3 of the last 5 samples of that product, the milk plant or producer-distributor shall enter into a compliance agreement with the department wherein they agree to suspend sale of the product until compliance with the quality standards is achieved.

(d) Compliance agreements shall be completed at the conclusion of an inspection or at a compliance meeting to be held at a later date if the permit or license holder is not available at the time of the inspection and compliance is not already achieved.

(e) The following shall be provided in the compliance agreement:

- (1) The date of the agreement;
- (2) The name of the establishment;
- (3) The permit or license number of the establishment;
- (4) The name of the person in charge of the establishment;
- (5) Attestation to the agreement to make repairs, corrections, and/or changes that are necessary to bring the establishment into compliance with Mil 301 and He-P 2700, or to suspend sale of milk or milk products that have exceeded quality standards;
- (6) A list of each repair, correction or change to be made including the date of intended completion;
- (7) The signature of the person in charge;

(8) The title of the signee; and

(9) The signature of the inspector or department representative making the agreement.

(f) Failure on the part of the permit or license holder to comply with the signed compliance agreement shall result in action against the permit or license as specified in He-P 2702.06 and He-P 2703.07.

Readopt He-P 2705.01, effective 11-21-08 (Document #9325), cited and to read as follows:

PART He-P 2705 ADMINISTRATIVE FINES

He-P 2705.01 Procedure for Administrative Fines. Whenever the department determines that a violation of RSA 184 or of the provisions of He-P 2700 has occurred, the permit or license holder shall be provided with a written notice:

- (a) Identifying each violation;
- (b) Informing the permit or license holder of the amount of the assessed fine under He-P 2705.02;
- (c) Informing the permit or license holder of the right to appeal the department's decision to assess a fine by submitting a written request for a hearing to the commissioner no later than 10 calendar days from the date of receipt of the notice;
- (d) Informing the permit or license holder of the opportunity to waive the right to a hearing by paying the fine within 10 days of the receipt of the department notice of assessed administrative fine; and
- (e) Informing the permit or license holder that if he or she does not request an appeal as specified in (c) above, the department's decision to assess a fine shall become final after the 10 day period specified in (c) above and the fine shall be paid to the department no later than 10 days from that date.

Readopt with amendment He-P 2705.02, effective 10-22-15 (Document # 10956), to read as follows:

He-P 2705.02 Schedule of Administrative Fines. The commissioner shall impose administrative fines not to exceed the specified amounts for the following violations:

- (a) For willful submission of fraudulent or materially false information on or with an application, in violation of He-P 2702.01 or He-P 2703.01, the fine shall be \$1,000;
- (b) For failure to cooperate during an inspection of a dairy farm, ~~or~~ milk processing plant, or distributor, including but not limited to failing to allow department representatives or inspectors to inspect, at any reasonable hours, all premises and places where milk is produced, handled, processed, or pasteurized, in violation of RSA 184:96, the fine shall be \$2,000;
- (c) For operating a dairy farm, or milk processing plant, or as a milk distributor in the state without first obtaining a milk producer permit or milk sanitation license, the fine shall be \$1,000. Each day that an individual or business continues to operate without obtaining a permit or license shall be considered a separate offense subject to an additional \$500 fine;
- (d) For failure to cease operation after a milk producer permit has been suspended, or when a permit has been revoked, the fine shall be \$1,000. Each day that a permit holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;

(e) For failure to cease operation after a milk plant, producer-distributor, or distributor license has expired, when an application has been denied, or when a license has been revoked, the fine shall be \$1,000. Each day that a license holder fails to cease operation shall be considered a separate offense subject to an additional \$500 fine;

(f) For failure to pay an administrative fine within 30 days of its imposition, or the completion of any appeal of the administrative fine, the fine shall be \$500 per day until the fine is paid; and

(g) For failure to submit a timely license renewal application in accordance with He-P 2703.06(c) the fine shall be \$75;

(h) For the same critical violation found at an in-state milk plant, distributor or producer-distributor on more than 2 consecutive inspections, the fine shall be \$500.

(i) For failure to enter into a corrective action plan (CAP) when required to do so by He-P 2703.09(h) the fine shall be \$500;

(j) For a failure to comply with any CAP that has been accepted by the department, the fine shall be \$500.

Readopt with amendment He-P 2705.03, effective 11-21-08 (Document #9325), to read as follows:

He-P 2705.03 Form of Payment of Fees and Administrative Fines. Whenever an applicant or permit or license holder makes a payment to the department in satisfaction of a fee or administrative fine, the following shall apply:

(a) Payment shall be made in the form of cash, check ~~or~~, money order or credit card for the exact amount due. Credit card payments for the exact amount due may be made on line at <http://www.dhhs.nh.gov/dphs/fp/index.htm>;

(b) Cash, money order, or certified check shall be required when an applicant or license holder has issued payment to the department by check, and such check was returned for insufficient funds;

(c) Any instrument described in (a) or (b) above shall be made payable to the "Treasurer-State of New Hampshire"; and

(d) Any payment made to the department by check which is returned for insufficient funds, and which a license holder has not made good by submitting cash, money order or certified check within 2 business days of notification by the department, including any penalty assessment required by RSA 6:11-a, shall result in revocation of the license or permit after notice and opportunity for a hearing.

Readopt with amendment He-P 2706, effective 11-5-09 (Document #9589), to read as follows:

PART He-P 2706 CLASSIFICATIONS AND LICENSURE FEES

He-P 2706.01 Milk Plant, Out-of-State Milk Plant, Distributor, and Producer-Distributor Classification and Licensure Fees.

(a) Milk plant, out-of-state milk plant, distributor, and producer-distributor shall be classified as follows:

- (1) Milk plant, out-of-state milk plant, distributor, and producer-distributor of over 25,000 pounds of milk and/or milk products per day shall be designated as Class 1;
 - (2) Milk plant, out-of-state milk plant, distributor, and producer-distributor of more than 10,000 pounds of milk or milk products per day, but not more than 25,000 pounds per day shall be designated as Class 2;
 - (3) Milk plant, out-of-state milk plant, distributor, and producer-distributor of more than 1,000 pounds of milk and/or milk products per day, but not more than 10,000 pounds per day shall be designated as Class 3; and
 - (4) Milk plant, out-of-state milk plant, distributor, and producer-distributor of not more than 1,000 pounds of milk and/or milk products per day shall be designated as Class 4.
- (b) Fees for milk plant, out-of-state milk plant, distributor, and producer-distributor shall be graduated by class in accordance with the following schedule:
- (1) Milk plant, out-of-state milk plant, distributor, and producer-distributor contained in Class 1 shall pay a licensure fee of \$350;
 - (2) Milk plant, out-of-state milk plant, distributor, and producer-distributor contained in Class 2 shall pay a licensure fee of \$275;
 - (3) Milk plant, out-of-state milk plant, distributor, and producer-distributor contained in Class 3 shall pay a licensure fee of \$175; and
 - (4) Milk plant, out-of-state milk plant, distributor, and producer-distributor contained in Class 4 shall pay a licensure fee of \$100.
- (c) Fees for milk plant, out-of-state milk plant, distributor, and producer-distributor licenses shall be annual fees in accordance with RSA 184:85 and shall be non-refundable.

Appendix

Rule	Specific State or Federal Statutes or Regulations which the Rule Implements
He-P 2701.01	RSA 184:79, 184:80 & 184:88
He-P 2702.01	RSA 184:88 & 184:89
He-P 2702.02	RSA 541-A:29 & 184:89
He-P 2702.03	RSA 184:88 & 184:89
He-P 2702.04	RSA 184:90 & 184:91
He-P 2702.05	RSA 184:89
He-P 2702.06	RSA 184:90-a
He-P 2702.07	RSA 541-A:30, II, 184:90, 184:91 & 184:94
He-P 2702.08	RSA 184:90 & 184:90-a
He-P 2702.09	RSA 184:90 & 184:92
He-P 2702.10	RSA 184:89 & 184:90

Rule	Specific State or Federal Statutes or Regulations which the Rule Implements
He-P 2703.01	RSA 184:84 & 184:85, I
He-P 2703.02	RSA 541-A:29 & 184:85, I
He-P 2703.03	RSA 184:85
He-P 2703.04	RSA 184:86 & 184:87
He-P 2703.05	RSA 184:84
He-P 2703.06	RSA 184:85, 86
He-P 2703.07	RSA 184:86, 541-A:30, II, 184:87 & 184:94
He-P 2703.08	RSA 184:84
He-P 2703.09	RSA 184:86, & 184:92
He-P 2703.10	RSA 184:85, II & 184:86
He-P 2704.01	RSA 184:85, II & 184:89
He-P 2705.01	RSA 184:105 & 541-A:31, III
RSA 2705.02	RSA 184:105
He-P 2705.03	RSA 6:11-a, 184:85, III & IV & 184:105
He-P 2706.01	RSA 184:85